

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

MIRANDA D'ANCONA, MARIE RUPERT,
DORIS KAUFMAN

Plaintiffs,

-against-

D& R TRANSPORT, (a/k/a P.S. INC.) and
DONALD P. MOORE

Defendants.

:
: **Index No. 07 CIV 5788(LTS)**

:
: **MOTION TO STRIKE THE COMPLAINT**
: **OR IN THE ALTERNATIVE TO COMPEL**
: **DISCOVERY**

C O U N S E L:


PLEASE TAKE NOTICE, that defendants **D&R TRANSPORT and DONALD P.**

MOORE, by their attorneys, LAW OFFICES OF CHARLES J. SIEGEL, will move the United States District Court, Southern District of New York for an Order pursuant to Federal Rules of Civil Practice 37(a), to strike plaintiff's complaint with prejudice based upon plaintiffs failure to submit automatic disclosure in this matter, or, in the alternative, for an Order (i) directing plaintiff MARIE RUPERT to provide automatic disclosure pursuant to Federal Rules of Civil Procedure and (ii) requiring plaintiff and her counsel to pay the costs associated with this motion, including attorneys fees.

Dated: New York, New York
July 14, 2008

Yours, etc.

Law Offices of
CHARLES J. SIEGEL
Attorney for Defendants
D& R TRANSPORT (a/k/a
PS, INC.) and DONALD P. MOORE
Office & P.O. Address
40 Wall Street
7th Floor
New York, New York 10005
(212) 440-2350

By: 
Jack L. Cohen(9449)

TO: A. JOSEPH TANDET
Attorneys for Plaintiff(MARIE RUPERT)
488 Madison Avenue, Suite 1100
New York, New York 10022
(212) 486-9494

TO: LAW OFFICES OF MYRON LASSER
Attorneys for Plaintiff (DORIS KAUFMAN)
60 Bay Street
Staten Island, New York 10301

LAW OFFICES OF DAVID HOROWITZ, P.C.
Attorneys for Plaintiff MIRANDA D'ANCONA
276 Fifth Avenue
New York, NY 10001
(212) 684-3630

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Plaintiffs,

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D& R TRANSPORT, (a/k/a P.S. INC.) and
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**DECLARATION OF JACK L. COHEN IN
SUPPORT OF MOTION**

JACK L. COHEN, declares as follows pursuant to the Federal Rules of Civil Procedure in 28
U.S.C. Section 1746:

1. I am a member of the bar of this Court and of the firm of the **LAW OFFICES OF
CHARLES J. SIEGEL**, the attorneys for defendants in the above-entitled action.

2. I make this declaration in support of a motion to strike plaintiff's complaint with
prejudice as to the defendants based upon plaintiff's failure to provide automatic disclosure in this
action or, in the alternative, pursuant to Federal Rules of Civil Procedure 37(a) for an Order compelling
plaintiff to provide said discovery and (2) requiring plaintiff and her counsel to pay the cost associated
with this motion, including attorneys fees.

3. This is an action for personal injuries allegedly sustained *inter alia*, by plaintiff **MARIE
RUPERT** as the result of a contact between **MS. RUPERT** and a vehicle owned by **D&R
TRANSPORT** and operated by **DONALD P. MOORE** on February 19, 2007 on a public highway
called Christopher Street in the Borough of Manhattan, City, County and State of New York. (A true
and correct copy of plaintiff's summons and complaint is annexed hereto and made a part hereof as
Exhibit "A").

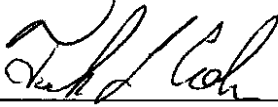
4. At a conference held before the Honorable Laura P. Swain, United States District Judge, plaintiff's were directed to provide automatic disclosures pursuant to the Federal Rules of Procedure, including disclosure of all medical records on or before June 20, 2008.

5. Despite the Order of the Court, plaintiff's counsel has failed to provide the requisite automatic disclosure in this matter pursuant to Federal Rule Procedure 26, and, virtue of said failure, has rendered defendants unable to adequately apprise themselves of the information and documents necessary to prepare a proper defense to the within action.

6. No application for the same or similar relief has been requested herein.

WHEREFORE, your affirmant respectfully requests that this Honorable Court enter an Order pursuant to the Federal Rules of Civil Procedure striking plaintiff's complaint for failure to provide automatic disclosure pursuant to the rules of court in this matter or, in the alternative for an Order compelling plaintiff to provide the automatic disclosure required by Court rule by requiring plaintiff and her counsel to pay the costs associated with this motion including attorneys fees.

Dated: New York, New York
July 14, 2008



Jack L. Cohen(9449)

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DAVID HURDOWITZ PC

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SAO 440 (Rev. 8/01) Summons in a Civil Action

UNITED STATES DISTRICT COURT

Southern

District of

New York

Miranda D'Ancona, Marie Rupert, Doris Kaufman

SUMMONS IN A CIVIL ACTION

V.

D&R Transport (AKA P.S. Inc), Donald P. Moore

CASE NUMBER:

07 CV 5788

JUDGE SWAIN

TO: (Name and address of Defendant)

D&R Transport (AKA P.S. Inc.),
1154 Highway 109 N, Lebanon, TN 37090

Donald P. Moore
16 Donald Dr., Candler, NC 28715

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

A Joseph Tandet
488 Madison Avenue, Suite 1100
New York, NY 10022

an answer to the complaint which is served on you with this summons, within 30 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

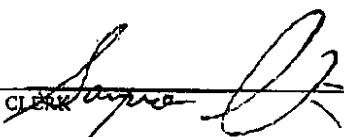
J. MICHAEL McMAHON

JUN 19 2007

CLERK

DATE

(By) DEPUTY CLERK



- (a) Jurisdiction founded on a diversity of citizenship and amount.
- (b) Plaintiff Miranda D'Ancona is a citizen of the State of New York.
- (c) Plaintiff Marie Rupert is a citizen of the State of New York
- (d) Upon knowledge and information sufficient to form a belief, Defendant D&R Transport is a corporation incorporated under the laws of the state of Tennessee, having its principal place of business in a State other than the State of New York.
- (e) Defendant Donald Moore at all times hereinafter mentioned, upon information and belief was an employee of D&R Transport and residing in the State of North Carolina.
- (f) The matter in controversy exceeds, exclusive of interest and costs, the sum of \$1,000,000.00
- (g) On February 19, 2007 on a public highway called Christopher Street in the Borough of Manhattan, City and State of New York, Defendant, D&R Transport (AKA P.S. Inc) through its servant, agent and/or employee Donald P. Moore

drove a motor vehicle, specifically an 18 wheeler trailer truck, negligently onto the public highway known as Christopher Street, causing D & R Transport's truck to strike Plaintiffs Miranda D'Ancona, Marie Rupert and Doris Kaufman, who were then lawfully walking upon the sidewalk of this public highway Christopher Street in the Borough of Manhattan, City and State of New York.

- (h) The following occurred as a result of the Defendant's negligence:

Plaintiff Miranda D'Ancona was thrown down to the ground and had her leg broken in many places, after having been struck by a fire hydrant caused to strike the Plaintiff by Defendant's truck. The Fire Hydrant was located on Christopher Street, and by striking Plaintiff caused her to sustain severe and permanent personal injuries.

Plaintiff Marie Rupert was thrown down and had her leg and her body severely injured, causing her to suffer great pain of body and mind.

Doris Kaufman was thrown down and sustained severe emotional and cerebral injuries, causing her to suffer great pain of body and mind, and she sustains emotional trauma.

- (i) All three Plaintiffs have suffered great pain of body and mind solely through the recklessness, carelessness and negligence of the Defendant, its servants, agents and/or employees, and without any fault of the Plaintiffs contributing thereto.
- (j) All three Plaintiffs named incurred extensive expenses for medical attention and hospitalization.
- (k) That the Plaintiff Miranda D'Ancona has suffered severe permanent injuries and fractures and has been confined to the hospital since the date of the accident,

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DAVID HOROWITZ PC

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February 19, 2007, and will continue to be confined for the foreseeable future.

Plaintiff Miranda D'Ancona has incurred expenses for medical attention and hospitalization in excess of \$500,000.00.

- (l) That Plaintiff Marie Rupert has suffered severe permanent injuries and is confined to bed and home, incurring expenses for medical expenses in the sum of \$300,000.00 and has sustained permanent disability, causing her to receive continual medical treatment.
- (m) Doris Kaufman has suffered emotional trauma and post-traumatic stress disorder, and has incurred expenses for medical attention in the sum of \$200,000.00.

WHEREFORE, Plaintiffs demand judgment against Defendants in the following manner:

Miranda D'Ancona: \$500,000.00 against Defendants jointly and severally;

Marie Rupert: \$300,000.00 against Defendants jointly and severally;

Doris Kaufman: \$200,000.00 against Defendants jointly and severally;

all together with costs, disbursements and such other and further relief as this Court deems just and proper.

Dated: New York, New York
June ____, 2007

A. Joseph Tandet
Attorney for Plaintiffs
488 Madison Avenue - Suite 1100
New York, NY 10022
212-486-9494

Attorney Bar Code: AT9078

AFFIDAVIT OF SERVICE

STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

GINA MARIE CALACO, being duly sworn, deposes and says:

That deponent is not a party to this action, is over 18 years of age and resides in Brooklyn, New York, that she is a clerk in the Law Office of CHARLES J. SIEGEL, the attorneys for the defendant, D&R TRANSPORT, (a/k/a P.S. INC.) and DONALD P. MOORE herein, that on the 14th day of JULY 2008, she served the within NOTICE OF MOTION TO STRIKE THE COMPLAINT OR IN THE ALTERNATIVE TO COMPEL DISCOVERY and DECLARATION OF JACK L. COHEN IN SUPPORT OF MOTION upon the undersigned attorneys by mailing a true copy in a postpaid wrapper in an official depository under the exclusive care and custody of the United States Postal Service within New York City, New York directed to them at the addresses shown, heretofore designated by them for that purpose:

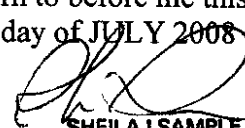
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60 Bay Street
Staten Island, New York 10301

LAW OFFICES OF DAVID HOROWITZ, PC
Attorneys for Plaintiff MIRANDA D'ANCONA
276 Fifth Avenue
New York, NY 10001
(212) 684-3630


GINA MARIE CALACO

Sworn to before me this
14th day of JULY 2008


SHEILA I SAMPLE
Notary Public, State of New York
No. 01SA6000019
Qualified in Kings County
Commission Expires Dec 8, 2009

THE COURT HAS THE HONOR TO
RECEIVE THE FOLLOWING FOR
RECORD AND RETURN TO THE HONOR.